

# ATTORNEY REGULATION ADVISORY COMMITTEE

## MINUTES

Wednesday, September 14, 2016  
9:30 a.m. – 10:30 a.m.

State Courts Building, 1501 West Washington Street, Phoenix, Arizona  
Conference Room 109

### **Present**

Hon. Lawrence Winthrop  
Hon. William J. O'Neil  
Whitney Cunningham  
Edward Novak  
Lisa Panahi  
George Riemer  
Patricia Sallen

### **Telephonically Present**

Ben Click  
J. Scott Rhodes  
Elaine Sweet  
Pamela Treadwill-Rubin  
Maret Vessella

### **Absent**

Emily Johnston  
David Lunn  
Ronald R. Watson

### **Staff**

Kathleen Curry  
Mark Wilson  
Carol Mitchell  
Cassandra Ramos

### **Regular Business**

9:30 a.m. Call to Order and Introductions

Hon. Lawrence Winthrop

### **Business Items and Potential Action Items**

*No. 1* Review and Approve June 2016 ARC minutes

**Motion:** Approve June minutes.

**Moved by:** The Honorable William J. O'Neil

**Second:** George Riemer

**Carried:** None opposed.

Pamela Treadwill-Rubin and Whitney Cunningham did not participate.

Whitney Cunningham joined the meeting.

*No. 2* Review, Discussion and Possible Action from Supreme Court's Rules Agenda  
*R-12-0002 Early Testing Program – Honorable Lawrence Winthrop*

Judge Winthrop provided a report to the Committee regarding the status of R-12-0002. At the June meeting, the Committee reviewed and approved for submission a supplemental report to the Supreme Court regarding R-12-002. At that meeting, a suggestion was made to enhance the draft report, by seeking additional input from students that had taken the exam early. Division staff distributed a survey and obtained feedback which was included in the revised report.

The report was finalized and submitted. The Supreme Court, at its Rules Agenda, approved R-12-0002 and the Early Testing Program will be made a permanent option for applicants in Arizona.

No Committee action was taken.

*R-15-0041 Rule 46 Concurrent jurisdiction – Honorable Lawrence Winthrop*

Judge Winthrop, George Riemer and Maret Vessella provided a report regarding the status of R-15-0041. R-15-0041 concerned concurrent jurisdiction between the State Bar of Arizona and the Commission on Judicial Conduct. No comments were received by the Court. The Court adopted proposed changes so that the State Bar and Commission have concurrent jurisdiction over judges for misconduct as lawyers before becoming judicial officers. The Court did not adopt changes that would have allowed the State Bar to conduct an independent investigation for conduct that occurred once a lawyer became a judicial officer. As drafted, Rule 46 requires the State Bar to rely on the Commission's record when recommending lawyer discipline with connection to a judicial discipline proceeding.

*R-16-0014 Confidentiality/Records – Carol Mitchell*

Carol Mitchell provided a report regarding the status of R-16-0014. R-16-0014 sought to amend Rule 35 and Rule 36 with respect to privacy issues regarding Court filings concerning the Committee on Examinations or the Committee on Character and Fitness when those filings contained medical reports or medical expert opinions. As amended, either the party or Committee may request that the Clerk of the Court seal medical or psychological reports prepared by a professional. Previously, such request needed to be in the form of a formal motion and granted by the Court.

Scott Rhodes asked for clarification regarding whether as amended the Rules included ARC's suggestion that language be drafted to avoid confusion and clarify that not only medical and psychological documents could be sealed, but upon a request to the Court and proper order, other information could be sealed as well. The Court did not accept ARC's proposed language but did create a rule change to allow documents to be sealed upon request.

*R-16-0023 Attorney Status/PDJ – Honorable William J. O'Neil*

Judge O'Neil provided a report regarding the status of R-16-0023. R-16-0023 addressed a number of issues.

A proposed change was made to clarify the default provisions and timeliness of a response in a disciplinary matter. The Court did not adopt these changes.

Another proposed change was the reinstatements be a final judgement subject to appeal by either side. The Court did not adopt this change.

An option for transferring to disability was given, however, there was no method for consent agreements to be filed. The Rule has been amended to allow consent agreements.

The Rule was amended to clarify that regarding administrative suspensions if there is no discipline and the State Bar performs an investigation and does not discover anything that would be of concern to the panel, the panel would not have to provide input.

It has been proposed that Rule 58 require that in a disciplinary matter if a party files an appeal the party must pay for and provide transcripts. The Court has requested comments on this provision. Scott Rhodes described that he was unable to find the proposed change on the website. Kathy Curry offered to review the website to improve access to the proposed changes.

Pamela Treadwill-Rubin joined during this discussion.

*R-16-0027 ER 1.2. Rule 42 – Honorable Lawrence Winthrop*

Judge Winthrop provided a report on R-16-0027. R-16-0027 as submitted would have allowed lawyers to counsel and assist their clients in complying with state law, where the client's proposed action would violate federal law. This petition, in part, recognized the ethical difficulty for lawyers providing advice to medical marijuana lawyers who gave advice on state law issues when the proposed actions may have violated federal law. The Committee had supported this petition. The Court denied this Rule petition.

*R-16-0029 Oath and Creed – Honorable Lawrence Winthrop*

Judge Winthrop provided a report on R-16-0029. The Committee had previously filed a comment supporting this petition. After the Committee's comment, revisions were made to the language of the petition and the petition has been deferred to the December Rules Agenda.. Lisa Panahi mentions that the proposed change seemed as if a lawyer did not have to comply with the laws of the United States. Judge O'Neil discussed major change in paragraph two of the petition concerning the language "appears to me". This language appears to create a subjective as opposed to an objective standard. Patricia Sallen mentions that the change in paragraph two is good because it is consistent with ER 3.1 and Rule 11. George Reimer suggests the removal of "to me." Judge O'Neil and Patricia Sallen will draft a comment.

**Motion:** ARC to submit a comment on proposed Rule change within designated time frame to change to an objective standard.

**Moved by:** George Riemer

**Second:** The Honorable William J. O'Neil

**Carried:** None opposed.

**No. 3** Proposed 2017 ARC Meeting Schedule

*Meetings held on Wednesdays for the following dates:*

3/1/17	6/7/17	12/13/17 (agenda incorrectly listed 12/14)
4/12/17	9/13/17	

*No. 4*    Call to Public

Edward Novak discussed his experience attending the July Bar Exam. The July Bar Exam had 559 testers, which is slightly down from the usual tester amount.

Judge O'Neil mentioned that ARC's Pending Rule Petitions webpage has not been updated since 2013 and needs to be updated. Mark Wilson also suggested reformatting the entire ARC page. Division staff will work to make necessary corrections.

Meeting Adjourned: 10:14 a.m.

**Next meeting date: Wednesday, December 7, 2016**

DRAFT